

FILED

AUG 26 2009

**U.S. DISTRICT COURT
CLARKSBURG, WV 26301**

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA,
CLARKSBURG DIVISION**

GATEWAY TOWNE CENTRE, LLC

Plaintiff,

V.

FIRST UNITED BANK AND TRUST

Defendant.

Case No. 1:09cv/27
(Formerly Monongalia County Civil Action Number
(09-C-566))

Judge Irene M. Keeley

Magistrate Judge _____

NOTICE OF REMOVAL

PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. §§ 1441, 1446, 1331, and 1367, the Defendant, First United Bank and Trust. ("Defendant" or "First United."), hereby gives notice of removal of the above-captioned action, Civil Action No. 09-C-566 pending in the Circuit Court of Monongalia County, West Virginia, to the United States District Court for the Northern District of West Virginia, Clarksburg Division. In support of removal, Defendant states as follows:

1. This Notice of Removal is timely pursuant to 28 U.S.C. § 1446(b) in that it is being filed within thirty (30) days of the first date the Defendant was served with a copy of the Complaint. The Circuit Clerk of Monongalia County issued service upon Robert W. Kurtz, President of First United, via certified mail on August 6, 2009. First United accepted the certified mail service on August 11, 2009.

2. The Circuit Court of Monongalia County is located within the Northern District of West Virginia, Clarksburg Division.

3. Pursuant to 28 U.S.C. § 1446(a), copies of all process and pleadings served upon the Defendant, along with a certified copy of the State Court Docket Sheet are attached hereto as Exhibit 1.

4. Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of Removal, along with a Notice of Filing Notice of Removal are being sent to all opposing parties and filed with the Clerk of the Circuit Court of Monongalia County, West Virginia. A copy of the Notice of Filing Notice of Removal is attached hereto as Exhibit 2.

5. By filing this Notice of Removal, Defendant does not waive any available defenses.

**THIS COURT HAS ORIGINAL JURISDICTION
(Diversity Jurisdiction)**

6. This Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1332 and, therefore, this action is removable to this Court pursuant to 28 U.S.C. § 1441.

7. The proper parties to this action are completely diverse:

a. The Plaintiff is described in the Complaint as a limited liability company organized and operated pursuant to the laws of the State of West Virginia. (Compl. ¶ 2.)

b. The Defendant is incorporated in Maryland, with its principal place of business in Maryland.

8. This action meets the minimum amount in controversy for diversity jurisdiction. See 28 U.S.C. § 1332(a). Indeed, the Plaintiff is specifically seeking an award of \$85,653.66. (Compl. ¶ 11). The amount in controversy, therefore, exceeds \$75,000, exclusive of interests and costs.

9. This Court has supplemental jurisdiction over all claims in this action pursuant to 28 U.S.C. § 1367.

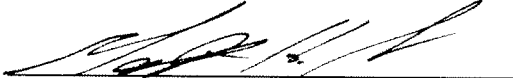
10. Defendant need not obtain consent from other defendants to remove this case, as there are no other defendants.

11. The Defendant reserves the right to amend or to supplement this Notice of Removal or to present additional arguments and/or legal authority in support of the removal of this case.

Dated: August 26, 2009

Respectfully submitted,

DINSMORE & SHOHL LLP



Jason S. Long (WVSB 9080)

Matthew H. Nelson (WVSB 10140)

DINSMORE & SHOHL LLP

215 Don Knotts Blvd.

Suite 310

Morgantown, WV 26501

Telephone: (304) 296-1100

Facsimile: (304) 296-6116

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned further certifies that a true copy of the foregoing **NOTICE OF REMOVAL** was served on the following parties via First Class, U.S. Mail, postage prepaid, on the **26th DAY OF AUGUST**, properly addressed as follows:

J. Bryan Edwards
CRANSTON & EDWARDS, PLLC
1200 Dorsey Ave., Suite II
Morgantown, WV 26501



Matthew H. Nelson